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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/873,475	06/04/2001	Louis Dischler	2060G	5759
			EXAMINER	
			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

7590 03/01/2004
Milliken & Company
P.O. Box 1927
Spartanburg, SC 29304

DATE MAILED: 03/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	09/873,475	DISCHLER ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The Amendment submitted on January 30, 2004, has been entered. Claims 1 – 24 have been cancelled. Claims 25 – 27 and 45 – 48 have been amended. Therefore, the pending claims are 25 – 48.
2. The 35 USC 112 1st paragraph rejection set forth in section 4 of the previous Office Action is withdrawn since the Applicant has amended the claims to include the limitation that the yarns are immobilized prior to abrading the fabric. Further, the 35 USC 112 2nd rejection set forth in section 6 is also withdrawn since the Applicant added the immobilization limitation.
3. Additionally, the 35 USC 102 and 35 USC 103 rejections based on Willbanks (5,080,952) and Otto (4,468,844) are withdrawn since neither of these references teach immobilizing the yarns prior to abrading the surface of the fabric. The immobilized fibers creates a structurally different pile fabric than those taught by Willbanks or Otto.

Claim Rejections - 35 USC § 112

4. Claims 45 – 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claims 45 – 48 are rejected as being indefinite. It is unclear how the comparative woven fabric is treated. The only treatment previously described in the claims involves abrading an immobilized fabric to produce a nicked appearance. However, the comparative fabric is said to not have a nicked appearance. Does that mean that it is treated by some completely different

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chemical or physical treatment which does not produce a pile surface? Of is the comparative fabric abraded without immobilizing the yarns in the fabric?

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 25 – 48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2, 9, 10, 11, 13, 19 and 20 of U.S. Patent No. 6,260,247. Although the conflicting claims are not identical, they are not patentably distinct from each other because the fabric claimed in US 6,260,247 is a woven fabric with a plush surface formed by abrading a fabric with immobilized yarns, as claimed in this application. The woven fabric is further recited to be a warp-faced twill fabric. Additionally, the recited fabric would inherently have the claimed property since the fabric is abraded by the same process. Therefore, the fabric recited in this application and the fabric claimed in US 6,260,247 overlap in scope.

8. Claims 25 – 48 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 2 – 4 of U.S. Patent No. 6,269,525.

Although the conflicting claims are not identical, they are not patentably distinct from each other

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because the fabric claimed in US 6,269,525 is a woven fabric with a plush surface formed by abrading a fabric with immobilized yarns, as claimed in this application. The woven fabric is further recited to be a warp-faced twill fabric. Additionally, the recited fabric would inherently have the claimed property since the fabric is abraded by the same process. Therefore, the fabric recited in this application and the fabric claimed in US 6,269,525 overlap in scope.

9. Claims 25 – 48 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over copending Application No. 09/569,951. Although the conflicting claims are not identical, they are not patentably distinct from each other because the fabric claimed in Application No. 09/569,951 is a woven fabric with a plush surface formed by abrading a fabric with immobilized yarns, as claimed in this application. Additionally, the recited fabric would inherently have the claimed property since the fabric is abraded by the same process. Therefore, the fabric recited in this application and the fabric claimed in Application No. 09/569,951 overlap in scope.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jenna-Leigh Befumo
February 20, 2004



CHERYL A. JUSKA
PRIMARY EXAMINER